Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

JOINT COMMENTS OF SBC COMMUNICATIONS INC. AND BELLSOUTH CORPORATION

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February 28, 2003 Its Attorneys

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JOINT COMMENTS OF SBC COMMUNICATIONS INC. AND BELLSOUTH CORPORATION

SBC Communications Inc. (SBC) and BellSouth Communications (BellSouth) hereby submit their Joint Comments in response to the Commission's Second Further Notice of Proposed Rulemaking in the above-referenced proceeding.[1]

[1] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking and Report and Order, FCC 02-329 (rel., December 13, 2002) (*USF Contribution Order* or *Second Further Notice*).

I. INTRODUCTION AND SUMMARY

More than one year ago, the Commission initiated a proceeding to consider whether it should replace the current revenue-based universal service contribution and recovery mechanism with a connections-based mechanism.[2] The Commission's recent order is a step in the right direction towards a universal service program that complies with the statutory requirements of section 254 and that provides a stable and sufficient source of universal service support. But it is only a modest step in that direction. As the Commission recognized, market developments are "increasing the strain" on the regulatory distinctions, such as interstate/intrastate and telecommunications/non-telecommunications, that determine the universal service contribution base under a revenue-based contribution methodology.[3]

As discussed further below, these strains have continued to increase during the past year. Bundled service offerings, particularly flat-rated packages of local and long distance services, are increasingly prevalent in the market. Moreover, providers are increasingly offering IP telephony services that they claim are exempt from regulation as a telecommunications service, including the obligation to contribute to universal service. The migration of end users to broadband services that are not included in the contribution base also continued to accelerate during the past year. These market trends are inevitable and irreversible.

A revenue-based contribution methodology is not sustainable or competitively neutral in the current market environment. While the Commission addressed some issues in the *Universal Service Contribution Order*, there is every reason to believe that the contribution base will

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[2] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) (*First Further Notice*).

[3] *Id.*, ¶ 12-13.

continue to erode as end users increasingly purchase bundled service offerings and migrate to services and technologies, such as IP telephony and cable modem services, that are not contributing to universal service. These contribution disparities create competitive distortions and affect end user purchasing decisions, which violates section 254 and the public policy principle that the universal service program should *not* be a competitive factor in the market.

The Commission should adopt the SBC/BellSouth connections-based contribution and recovery proposal described in the *Second Further Notice*. This proposal has been modified to address implementation concerns raised by IXCs about splitting the contribution for switched connections. In particular, a carrier providing an end user with a non-switched connection to either an interstate private line service or a switched long distance service is assessed the full end user connection charge, even if the end user has a separate retail relationship for the interstate transport component of the service. The rationale for this rule is that most interstate services involving a non-switched connection involve a single end-user retail relationship and that it may be difficult to determine the appropriate IXC connection charge for these types of services.

With respect to switched end user connections, each end user connection is assessed a full end user connection charge whenever the end user's carrier for switched local service is also the end user's carrier for switched long distance service. If an end user purchases switched local services and switched long distance service from *different* providers, then the carrier providing switched local service will be assessed one half the end user connection charge. The remaining half of the end user connection charge will be converted into a residual revenue requirement that is assessed on all providers of stand-alone switched long distance services and occasional use services. This approach retains the existing revenue-based contribution methodology for stand-alone interstate switched long distance services and maintains competitive neutrality between stand-alone service offerings and bundled service offerings. It also provides a workable mechanism for ensuring that all providers of interstate telecommunications services make an "equitable and nondiscriminatory" contribution to universal service, as required by section 254.

The Commission should not adopt either of the alternative proposals discussed in the *Second Further Notice*. Both the connections-based contribution proposal with a mandatory minimum obligation and the number-based proposal are very similar to the methodology proposed by the Coalition for Sustainable Universal Service (CoSUS). As with the original CoSUS proposal, these proposals fail to satisfy the requirement of section 254(d) that all providers of interstate telecommunications contribute on an "equitable and nondiscriminatory" basis. Under both proposals, stand-alone interstate long distance services are completely excluded from the contribution base and the amount of a carrier's contribution may bear no reasonable relationship to its level of interstate activity. There are also significant implementation issues that would have to be addressed if the Commission were to adopt either proposal.

II. A REVENUE-BASED CONTRIBUTION AND RECOVERY MECHANISM IS NOT SUSTAINABLE OR COMPETITIVELY NEUTRAL

The Commission's interim revenue-based contribution and recovery mechanism is an improvement over its prior historical revenue-based approach. It does not, however, address many of the important concerns that led the Commission to consider replacing its revenue-based contribution methodology with a methodology that assesses contributions based on the "number and capacity of connections provided to a public network."[4] The Commission quite properly remains concerned about retaining *any* contribution methodology based on interstate

[4] *Id.*, ¶ 2.

telecommunications revenues.[5] For all of the reasons previously identified by the Commission, a contribution and recovery mechanism based solely on interstate revenues is not sustainable or competitively neutral in the long term.

First, a revenue-based contribution methodology does not provide a stable or sufficient source of universal service support. That was one of the primary reasons why the Commission initiated a proceeding to consider whether to move from a revenue-based to a connections-based methodology.[6] The Commission's interim revenue-based methodology does not nothing to reverse the rapid erosion of the universal service contribution base that is being caused by the proliferation of IP telephony services and broadband services that are not included in the current contribution base.

Indeed, the problem of an unstable and shrinking contribution base has grown worse during the past year. A host of IP telephony providers, including Net2Phone and Vonage, recently filed comments with the Commission asserting the position that all IP telephony services are categorically excluded from regulation as telecommunications services.[7] A number of these IP telephony providers expressly stated that they currently do not contribute to universal service.[8] The fact that IP telephony providers are taking the position that any service they provide is exempt from universal service contributions, regardless of whether it is properly classified as a telecommunications services, means that the revenue-based universal service

[5] *Second Further Notice*, ¶ 69.

[6] *First Further Notice*, ¶¶ 7-8.

[7] *See, e.g.*, The American Internet Service Providers Association et al., Comments at 4; Net2Phone Comments at 4.

[8] *See, e.g.*, Joint Comments of Association for Communications Enterprises, Big Planet, Inc., ePHONE Telecom, Inc., ICG Communications, Inc., and Vonage Holdings Corp. at 10-11.

contribution base will erode rapidly as IP telephony services continue to proliferate. This is not just a long-term problem. During the past year, the rapid growth of IP telephony services and the imminent arrival of cable IP telephony services on a large-scale basis has been well documented. The Commission must act now before IP telephony services jeopardize the sufficiency and stability of universal service support.

SBC and BellSouth also have discussed the rapid erosion of the contribution base caused by the migration to broadband services that are not included in the contribution base. The Commission has indicated that it will address this issue in its pending proceeding to consider the appropriate regulatory framework for broadband Internet access services. However, a year has already passed without any resolution of this issue, and SBC and BellSouth are concerned about further delays that result in a continuing disparity in the contribution obligation of competing broadband providers. If for any reason the Commission does not promptly address universal service issues in its broadband proceeding, then it should be addressed in the *Second Further Notice* proceeding. As Commissioner Abernathy stated in her separate statement to the *Universal Service Contribution Order*, the Commission can and should provide parity between wireline DSL service and competing broadband services simply by exempting from assessment any DSL transmission service provided *to ISPs* pending the outcome of the *Wireline Broadband* proceeding.[9] Consistent with the requirements of section 254(d), the Commission must immediately implement this interim solution if the *Wireline Broadband* proceeding is not concluded prior to the *Second Further Notice* proceeding.

While it is certainly possible for IP telephony providers and broadband providers to contribute to universal service on the basis of interstate telecommunications revenues, inclusion

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[9] *Universal Service Contribution Order* Separate Statement of Commissioner Kathleen Q. Abernathy.

of these services in the contribution base is much easier with a connections-based contribution methodology. If it adopts a connections-based contribution methodology, the Commission would not have to make individual determinations about whether IP telephony services are interstate telecommunications services. Nor would the Commission have to be concerned about broadband Internet providers allocating a portion of their revenues as eligible interstate telecommunications revenues. Instead, the Commission could expand the contribution base to include broadband connections and avoid having to make any determinations about the applications and services delivered over those connections. The result would be a straightforward and less intrusive contribution methodology that can easily accommodate new technologies and services.[10]

Second, a revenue-based contribution methodology is not manageable in a rapidly evolving market. For example, the Commission was forced to continue its use of a wireless safe harbor in the *Universal Service Contribution Order* because not all CMRS providers can accurately determine their interstate telecommunications revenues. And the Commission issued a *Reconsideration Order* that gives CMRS providers that report actual interstate telecommunications revenues the flexibility to conduct company-wide traffic studies and average the results of those studies across all end users.[11] Thus, the determination of wireless interstate telecommunications revenues remains an inexact process at best.

Moreover, the Commission's interim revenue-based contribution methodology does nothing to address the problems caused by bundled service offerings (*e.g.*, flat rated packages

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[10] *See id.* Separate Statement of Chairman Michael K. Powell ("[A] connections-based approach provides a rational, simplified mechanism for addressing the disparity that currently exists between DSL and cable modem platforms.").

[11] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Order and Order on Reconsideration, FCC 03-20 (rel., January 30, 2003).

that include both local and long distance services).[12] Millions of residential customers are now purchasing such bundled service offerings from AT&T, WorldCom and other carriers. Because carriers are still required to make an arbitrary allocation of interstate telecommunications revenues, the growing popularity of service bundles is "increasing the strain" on the regulatory distinctions that are used to determine the amount of a provider's contribution.[13]

Third, a revenue-based contribution methodology is not competitively neutral. The Commission has reduced, but by no means, eliminated the disparate treatment of wireline and wireless providers by increasing the wireless safe harbor. Further, the interim revenue-based contribution methodology does nothing to address the disparate treatment of ILECs and CLECs, the latter of which retain unfettered discretion in their allocation of revenues to the interstate jurisdiction. As previously discussed, the Commission also has done nothing to address the market distortions created by its disparate treatment of wireline broadband services and competing broadband services that are not included in the contribution base. All of these disparities must be addressed in the *Second Further Notice* so that the Commission's universal service contribution methodology satisfies section 254's requirement that contributions be assessed in a competitively neutral manner.[14]

III. THE COMMISSION SHOULD ADOPT THE MODIFIED SBC/BELLSOUTH CONNECTIONS-BASED CONTRIBUTION AND RECOVERY PROPOSAL

The Commission should adopt the SBC/BellSouth connections-based contribution and recovery proposal described in the *Second Further Notice*. This proposal has been modified to address implementation concerns raised by IXCs about splitting the contribution for switched

[12] *First Further Notice*, ¶ 12.

[13] *Id.*

connections. The SBC/BellSouth proposal retains the benefits of a connections-based approach by ensuring that competing technologies and telecommunications providers are subject to a comparable contribution assessment. At the same time, the proposal provides a workable mechanism for assessing an "equitable and nondiscriminatory" contribution on every provider of interstate telecommunications services, as required by section 254.

A. The SBC/BellSouth Proposal

The SBC/BellSouth proposal maintains a connections-based assessment for most types of interstate telecommunications services. In particular, a carrier providing an end user with a non-switched connection to an interstate private line service or to a switched long distance service is assessed based on the end user connection. This includes interstate private line services, interstate special access connections, and interstate broadband (*e.g.*, ATM and Frame Relay) connections. For these services, the provider of the end user connection is assessed the full end user connection charge, even if the end user has a separate retail relationship for the interstate transport component of the service. The rationale for this rule is that most interstate services provided with a non-switched connection involve a single end-user retail relationship and that it may be difficult to determine the appropriate IXC connection charge for these types of services.

With respect to switched end user connections, each end user connection will be assessed a full end user connection charge whenever the end user's carrier for switched local service is also the end user's carrier for switched long distance service. When an end user's carrier for switched local service is *not* the end user's primary long distance carrier for switched long distance service, the carrier providing switched local service will be assessed one half the end user connection charge and the carrier providing switched long distance service will be assessed

[14] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 48 (1997) (*First Universal Service Order*).

on interstate long distance service revenues generated by this category of end user, as described below. A provider of "occasional use" services (*e.g.*, dial around long distance, prepaid calling carrier and operator services) also will be assessed based on interstate revenues generated by end users. This rule reflects the fact that many end users continue to maintain separate retail relationships for switched local service and switched long distance service. Further, it should not be administratively difficult for an IXC to identify end users that have presubscribed to their interstate long distance service for purposes of calculating and recovering universal service contributions.

The Commission should determine the appropriate contribution factors using the projected annual universal service funding requirement, the previous year's end user connections and the previous year's interstate end user long distance revenues. An end user connection base factor is calculated by dividing the annual funding requirement by total end user connections (expressed in bandwidth capacity units). The end user connection charge is calculated by multiplying the end user connection base factor by the total number of bandwidth capacity units.

For switched service where the end user purchases switched local and switched long distance services from different providers, one half of the end user connection charge is assessed to the switched local service. The remaining half of the end user connection charge is multiplied by the total number of stand-alone switched long distance connections that are associated with switched local connections to create a residual funding requirement. The residual funding requirement, in turn, is divided by the total interstate end user revenues from stand-alone switched long distance and occasional use services, in order to create a revenue-based contribution factor. Thus, providers of stand-alone switched long distance and occasional use services will continue to contribute based on a revenue-based methodology, but the contribution factor will be determined by converting the remaining half of end user connection charges into a revenue requirement.

The modified SBC/BellSouth proposal maintains competitive parity between switched local and switched long distance services purchased separately and those purchased as a bundled service offering. If anything, providers of stand-alone switched long distance service may enjoy a competitive advantage over providers of bundled service offerings. The residual revenue requirement is applied, not only to revenues from stand-alone switched long distance services, but occasional use services as well. Therefore, a larger pool of providers will be sharing the contribution obligation for the half end user connections assigned to the residual revenue requirement.

IXCs benefit from this approach in two ways. First, the end user connection charge is split evenly between the IXC and the LEC, even though the IXC typically generates much more interstate revenue from its stand-alone switched long distance service than the LEC does from the SLC. Second, the half end user connection charges allocated to long distance providers is recovered from both stand-alone switched long distance and occasional use services. In other words, the SBC/BellSouth approach allocates a smaller proportional contribution obligation to providers of stand-alone switched long distance services and occasional use services. This conservative approach ensures that customers do not have a disincentive to purchase such services.[15] It also ensures that traditional long distance providers are not placed at a competitive disadvantage compared to providers of local and long distance bundled service offerings.[16] Moreover, an important benefit of the SBC/BellSouth approach is that, as the market continues

[15] *See Second Further Notice*, ¶ 89.

[16] *Id.*, ¶ 95.

to evolve towards more bundled service offerings, connections-based assessments will become an even larger portion of the contribution base. For these reasons, the Commission should not adopt the alternative proposal that would assess all switched local connections on a capacity basis and all switched long distance connections on a revenue basis.[17]

SBC and BellSouth have proposed using a large number of capacity tiers. The Commission, in contrast, has requested comment on a four-tier structure.[18] SBC and BellSouth support the Commission's attempt to simplify the capacity tier structure, but remain concerned about constructing an artificial distinction between residential and business connections. The Commission should design the capacity tier structure so there is a reasonable relationship between a carrier's contribution and the level of its interstate activities, as represented by the number of connections provided by the carrier and the capacity of those connections. Higher capacity connections should be assessed a larger contribution because they can be used to send and receive more interstate traffic and they may even be linked to multiple interstate services.

Assessing a larger contribution on higher capacity connections also makes sense because such connections generate larger amounts of interstate telecommunications revenues. The Commission should design the end user connection charge so there is a uniform assessment on voice-grade switched connections, regardless of whether they are purchased by a residential or business end user. The Commission also should establish capacity tiers that bear a reasonable relationship to the amount of interstate telecommunications revenues generated by standard arrangements in each tier of service. This results in a rational approach to capacity tiers that avoids the need for a residential cap and an arbitrary distinction between comparable residential

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[17] *Id.*, ¶ 93.

[18] *Id.*, ¶ 81.

and business end user connections. SBC and BellSouth are willing to consider any capacity tier proposals that are consistent with these principles, and plan to respond to the recently released staff analysis of estimated assessment levels under the interim revenue-based contribution methodology, as well as the three alternative proposals.[19]

B. Benefits of the SBC/BellSouth Proposal

The modified SBC/BellSouth proposal achieves all the benefits of their original connections-based proposal while, at the same time, addressing implementation concerns that were raised in connection with the original proposal. It simplifies the assessment process for many types of services, which addresses concerns raised by the Federal-State Joint Board on Universal Service and others that the SBC/BellSouth connections-based proposal would be difficult to administer. Under the modified SBC/BellSouth proposal, most services will be assessed only a single connection charge and stand-alone switched long distance services will remain subject to a revenue-based assessment. This will simplify the transition process while achieving many of the benefits of a connections-based approach. Indeed, as the market continues to evolve toward more bundled service offerings, connections-based assessments will become an even larger portion of the contribution base.

Moreover, the modified SBC/BellSouth proposal fully addresses the implementation concerns raised by IXCs. IXCs will not have to determine the capacity and number of connections provided in connection with more complex business services, such as interstate private line services and Centrex services. And IXCs will not need to obtain *any* information from a LEC about the capacity or number of access connections in order to calculate or recover its own universal service contributions. In addition, IXCs will not have to make major changes

[19] *See Commission Seek Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket No. 96-45 et al., Public Notice, FCC 03-31 (rel. Feb. 26, 2003).

to their billing systems because stand-alone switched long distance services will be assessed on a revenue basis.

Thus, the modified SBC/BellSouth proposal produces the same benefits, as well as some additional benefits, as their original proposal. It complies with the statute, is fair to all providers of interstate telecommunications services and ensures that there is a stable and sufficient source of universal service in an evolving market. As the Commission itself has recognized, adoption of a connections-based contribution and recovery mechanism is an effective response to market developments that are "increasing the strain" on the revenue-based methodology.[20] Not only is a connections-based methodology more appropriate for a market that is increasingly characterized by bundled service offerings, but it provides a workable framework for expanding the contribution base to include new services and technologies, such as IP telephony and cable modem services.

As previously demonstrated, the SBC/BellSouth proposal also is consistent with the statutory universal service requirements set forth in section 254. It ensures that all providers of interstate telecommunications services contribute to universal service on an "equitable and nondiscriminatory" basis, as required by sections 254(b)(4) and 254(d). Unlike the current revenue-based contribution methodology, the SBC/BellSouth connections-based contribution methodology maintains competitive neutrality among competing ILECs, CLECs and CMRS providers. Further, it generates an equivalent assessment whether switched local and long distance services are purchased separately or as a bundle. Thus, the SBC/BellSouth proposal accommodates both the *status quo*, where many end users continue to purchase switched local

[20] *First Further Notice*, ¶¶ 12-13.

and long distance services from separate carriers, and the likely future of the market where most end users will probably choose to purchase bundled service offerings from a single provider.

Finally, the SBC/BellSouth proposal helps to satisfy the requirement of section 254(b)(5) that the Commission must establish a "specific, predictable and sufficient" universal service mechanism. By including virtually all, if not all, providers of interstate telecommunications in the contribution base, the SBC/BellSouth proposal ensures that residential local telephone customers will not be forced to bear an unreasonable share of universal service costs as more and more customers migrate to alternative technology platforms that are not included in the existing contribution base.

IV. THE COMMISSION SHOULD NOT ADOPT A MANDATORY MINIMUM OBLIGATION OR NUMBERS-BASED CONTRIBUTION METHODOLOGY

The modified SBC/BellSouth proposal is superior to either of the alternative connections-based methodologies discussed in the *Second Further Notice*. The connections-based contribution proposal with a mandatory minimum obligation is essentially a modified version of the CoSUS proposal. However, the proposal does not correct the fundamental flaw of the CoSUS proposal — namely, it does not require all providers of interstate telecommunications to make an equitable and nondiscriminatory contribution to universal service. While a minimum contribution requirement would ensure that a carrier with significant interstate telecommunications revenues would at least make *some* contribution to universal service, that contribution would bear no relation to the carrier's interstate activity. A carrier could report hundreds of millions of dollars of interstate telecommunications revenues and contribute only a small fraction (*e.g.*, one percent) of those revenues to universal service. To make matters worse, large IXCs such as AT&T and WorldCom would avoid any contributions based on their massive stand-alone interstate long distance operations. As with the original CoSUS proposal, the quintessential interstate telecommunications service — interstate long distance service — would be largely excluded from the contribution base. Such a result does not satisfy the requirements of section 254(d).

Another problem with the mandatory minimum obligation approach is that it would not produce a consistent method of assessing contributions. For example, an ILEC such as SBC or BellSouth with a large number of end user connections presumably would contribute on the basis of its total connections, rather than the minimum mandatory obligation. In contrast, a large IXC such as AT&T that is increasingly providing end user connections could be limited to contributing the amount of the minimum mandatory obligation, since end user connections can be offset against the minimum obligation. The result would be an inconsistent contribution methodology that treats carriers differently depending on their legacy status as a provider of end user connections or long distance service.

SBC and BellSouth also have significant concerns about the application of the mandatory minimum obligation. For example, the Commission's proposal to assess the mandatory minimum obligation on all interstate telecommunications revenues, not end-user telecommunications revenues, would represent a dramatic departure from its current approach.[21] The Commission does not explain how it would avoid the "double payment" problem, which is the primary reason that the contribution base is currently limited to end user interstate telecommunications revenues.[22] Likewise, the Commission does not explain how it would develop a reasonable basis for progressive revenue-based tiers for a minimum mandatory

[21] *Second Further Notice*, ¶ 78.

[22] *First Universal Service Order*, ¶ 845.

obligation.[23] The Commission also would have to resolve the issue of establishing a threshold for the minimum mandatory obligation that is consistent with the statutory purpose of the *de minimis* exemption. Any exemption must be narrowly tailored to those cases where a provider's interstate telecommunications activities are so limited that the administrative cost of collecting contributions from the provider would exceed the amount of the provider's contribution. The Commission cannot simply select an arbitrary amount as the threshold for its mandatory minimum obligation without conducting this analysis.

The AT&T/Ad Hoc number-based contribution proposal also fails on statutory and administrative grounds. Under this methodology, providers would be assessed on the basis of telephone numbers assigned to their end users (assigned numbers), while special access and private lines that do not have assigned numbers would be assessed based on the capacity of those end-user connections as set forth in the CoSUS proposal. Although AT&T and Ad Hoc have wisely recognized the legal deficiencies of the CoSUS proposal and withdrawn support for it, the current telephone-number based plan set forth by these parties is just as unlawful as the original CoSUS proposal. Assessing carriers based on telephone numbers would result in a system that is neither "competitively neutral" nor administered in an "equitable and nondiscriminatory" manner as required by the Act. Moreover, the administrative aspect of such an assessment mechanism is more complicated than AT&T and Ad Hoc suggest. Accordingly, as discussed more fully below, the Commission should reject the telephone-number based methodology.

As with the CoSUS proposal, a number-based contribution mechanism is plainly unlawful. It is inconsistent with the statute and public policy to tie universal service contributions to telephone numbers, which have no correlation to the level of a carrier's

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[23] *Second Further Notice*, ¶ 80.

interstate telecommunications activities. Moreover, the section 2(b) concerns that were raised in connection with the CoSUS proposal remain under the AT&T/Ad Hoc plan. While the SBC/BellSouth connection-based contribution methodology can be structured so that intrastate-only connections are excluded and the assessment on local switched connections bears a reasonable relationship to interstate activity, a number-based approach treats all local connections the same. Thus, a number-based contribution methodology would assess contributions on numbers that are used solely in connection with intrastate services, which actually creates more of a section 2(b) problem than the CoSUS proposal.

The AT&T/Ad Hoc proposal also fails to satisfy section 254 because it is designed to minimize the contribution obligations of IXCs, notwithstanding the fact that IXCs generate the majority of interstate telecommunications revenues, and to shift the burden of universal service contributions to LECs and wireless carriers. IXCs do not obtain numbers from the North American Numbering Administrator (NANPA) or the Pooling Administrator (PA); therefore, they would be excluded from any assessments based on telephone numbers. This categorical exclusion is *per se* unlawful. AT&T's and Ad Hoc's attempt to remedy this obvious flaw is to create a supplemental system that assesses special access and private lines that do not have assigned numbers based on the capacity of end user connections as proposed by CoSUS. This approach suffers from the same deficiencies as the CoSUS plan. Again, contrary to the Act, the number-based proposal effectively eliminates IXCs from the contributing pool by minimizing their contributions and shifting the burden to LECs and CMRS providers. Such an approach is hardly "equitable and nondiscriminatory" as mandated by statute.

SBC and BellSouth also are concerned about the potential gaming that could occur under a number-based contribution methodology. If history has shown anything, it is that a technology or provider-specific contribution mechanism will not provide a stable and sufficient source of universal service support in the rapidly evolving market. For example, a provider may be able to develop technology that allows end users to contact each other over an IP network without utilizing traditional telephone numbers. There is no reason why the resulting telecommunications service should be arbitrarily excluded from the contribution base, as it apparently would be under the AT&T/Ad Hoc number-based proposal.

In addition, SBC and BellSouth have administrative concerns about a number-based contribution methodology. The *Second Further Notice* asks for comment on mechanisms that could be used to identify the quantity of telephone numbers assigned to particular carriers.[24] The Commission suggests using the Numbering Resource Utilization/Forecast (NRUF) reports filed by certain carriers. Use of these reports is inadequate for a number of reasons. First, the Commission does not require all entities with numbering resources to submit NRUF reports — only those carriers that receive telephone numbers from the NANPA, the PA, or another carrier — are subject to the Commission's reporting rules.[25] As indicated above, IXCs are excluded from this category, as are broadband providers, payphone providers, and non-carriers,[26] even though all of these entities utilize numbering resources. If the universal service requirement is to

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[24] *Id.*, ¶ 99.

[25] *See* 47 C.F.R. § 52.15(f)(2) (definition of "reporting carrier"). The AT&T/Ad Hoc number-based proposal also fails to address the treatment of 800, 888, 877 and 866 toll-free numbers, which are assigned to entities known as Responsible Organizations. These toll-free numbers are assigned by the toll-free number database administrator and are not reported on NRUF.

[26] Although the Commission identifies two types of non-carriers — dealers and unified messaging service providers, it has yet to explicitly define this term. Therefore, it is unclear what entities fall within this category. BellSouth asked the Commission to define the term "non-carrier" in the *Numbering Resource Optimization* proceeding over two years ago. *See* BellSouth Petition for Reconsideration/Clarification, CC Docket No. 99-200, at 4-5 (filed July 17, 2000).

be "equitable and nondiscriminatory," use of NRUF data as the basis for assessments is inadequate.

A second problem with relying on NRUF reports is that there are some inconsistencies in how carriers complete these reports. A recent report to the Commission by the North American Numbering Council (NANC) revealed that carriers are interpreting the Commission's definition of "intermediate" numbers[27] in a variety of different ways.[28] As the Report notes, some carriers will categorize a telephone number as "assigned," while others will categorize that same number as "intermediate." Because of these multiple interpretations, the numbering categories reported on NRUF are not uniform across carriers. Thus, the data contained in the NRUF reports may not be reliable for purposes of assessing contribution obligations.

There are also practical difficulties with the current reporting rules that further weigh against reliance on NRUF to assess universal service contributions. Carriers providing intermediate numbers to "non-carrier" entities are supposed to report to the NANPA on behalf of these non-carriers.[29] Once a "non-carrier" assigns an "intermediate" number to a customer, the initial assigning carrier is supposed to move the number from the "intermediate" category to the

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[27] The Commission has defined "intermediate numbers" as "numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers." 47 C.F.R. § 52.15(f)(1)(vi).

[28] *See* Letter from Robert C. Atkinson, Chairman, North American Numbering Council, to Mr. William Maher, Chief, Wireline Competition Bureau, FCC, Re: Intermediate Numbers (dated Jan. 29, 2003) (Attachments — NANC IMG Review of Intermediate Numbers (dated Nov. 19, 2002 and Minority Report on Intermediate Numbers (dated Jan. 15, 2003)). The NANC has asked the Commission to institute a rulemaking to clarify the definition of "intermediate" number.

[29] *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, ¶ 40 (2000) (*Numbering Report and Order*).

"assigned" category.[30] However, as BellSouth pointed out in the *Numbering Resource Optimization* proceeding over two years ago, there is no way for the reporting carrier to know how the receiving carrier is using the number.[31] Carriers have no way to obtain such data from non-carriers, and these non-carriers are under no obligation to provide such information. As a result, the "assigned" category on NRUF may not be capturing all of the numbers contemplated by the Commission when it adopted this requirement.

It is inappropriate to rely on a reporting framework with a substantial number of inaccuracies and inconsistencies as the basis for assessing universal service contributions. Further, any mechanism used to assess a carrier's universal service obligation must be objective and not subject to varying interpretations. As indicated above, however, the current NRUF reporting process does not ensure uniform reporting across the industry. In addition, because only a subset of entities are required to submit NRUF reports, there are significant gaps in accounting for the relevant numbering resources that would have to be filled in order to assess carrier contributions on an equitable and nondiscriminatory basis. In light of the foregoing, the Commission should not rely on NRUF data to assess universal service contributions.

Another problem is that distinguishing telephone numbers based on technology is not technically possible in most instances.[32] The *Second Further Notice* asks whether to assess

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[30] *Numbering Report and Order*, 15 FCC Rcd ¶ 21.

[31] *See, e.g.,* BellSouth Petition for Reconsideration/Clarification, CC Docket No. 99-200, at 3 (filed July 17, 2000); BellSouth Opposition, CC Docket No. 99-200, at 14-14 (filed August 15, 2000).

[32] Identification of technology would be possible to some degree if a technology-specific overlay were implemented. For example, if wireless carriers were required to draw numbers from an overlay area code, it would be possible to distinguish wireless services from wireline services based on the area code of the assigned telephone number. However, there are obvious limits to this identification. If, for example, the overlay involved the "take back" of all numbers held by wireless customers in the relevant area code, wireline services could be distinguished on a

telephone numbers associated with pagers at a lower level,[33] but there is no way to achieve a lower assessment if paging numbers cannot be identified. Identifying the service associated with a particular number would require reporting by those entities or individuals holding that specific number, and it would be impossible to impose and enforce such a reporting requirement, especially for non- carriers.

Finally, the telephone-number based methodology would not result in a correct assessment on ported telephone numbers.[34] For the purposes of NRUF reporting, if a carrier ports a number to another carrier in order to transfer a customer's service, the porting carrier classifies the number as "assigned," while the receiving carrier does not count the number. If the Commission were to adopt a telephone-number based mechanism, the receiving carrier should be assessed the universal service contribution, not the carrier porting the number. Under the AT&T/Ad Hoc proposal, the porting carrier would be responsible for the universal service payment because the ported number would be considered "assigned." This result is unfair and further exemplifies the inequities of the AT&T/Ad Hoc approach.

V. CONCLUSION

For these reasons, the Commission should adopt the modified SBC/BellSouth proposal for a workable connections-based contribution and recovery mechanism that satisfies the requirements of section 254(d). This proposal maintains the benefits of a connections-based approach, but it also eliminates complexity and implementation concerns that were raised about the original SBC/BellSouth proposal. The Commission has made progress with its interim revenue-based contribution and recovery mechanism, but it cannot eliminate all of the

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prospective basis only, since both wireless and wireline customers would continue to hold numbers in the old area code.

[33] *Second Further Notice*, ¶ 97.

deficiencies that make a revenue-based methodology unstable and unmanageable in the long term. The Commission also should reject alternative proposals that do not meet the basic statutory requirements of section 254(d) or the fundamental principle of competitive neutrality.

Respectfully Submitted,

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February 28, 2003

[34] *Id.*, ¶ 97.